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Jasper Benincasa, Jr.  
 Floerfida Benincasa  
 9359 Roping Cowboy Ave.  
 Las Vegas, NV 89178  
 (702) 413-8624

'06 APR 27 AM 11:29

U.S. DISTRICT COURT  
 DISTRICT OF NEVADA

UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA

In re:	)	BK-S-06-10725-LBR
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY	)	
Debtor	)	
In re:	)	BK-S-06-10726-LBR
	)	Chapter 11
USA CAPITAL REALTY ADVISORS, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10727-LBR
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED	)	
FUND, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10728-LBR
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,	)	
LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10729-LBR
	)	Chapter 11
USA SECURITIES, LLC,	)	
Debtor	)	
Affects:	)	
<input checked="" type="checkbox"/> All Debtors	)	
<input type="checkbox"/> USA Commercial Mortgage Co.	)	
<input type="checkbox"/> USA Securities, LLC	)	
<input type="checkbox"/> USA Capital Realty Advisors, LLC	)	DATE: 5/3/06
<input type="checkbox"/> USA Capital Diversified Trust Deed	)	TIME: 9:30 AM
<input type="checkbox"/> USA First Trust Deed Fund, LLC	)	

OPPOSITION TO MOTION FOR ORDER RE STIPULATION RE SETOFF AND BANK ACCOUNTS (WELLS FARGO) AND ORDER UNDER 11 USC §§ 105(A), 345, AND 363 APPROVING DEBTORS' PROPOSED CASH MANAGEMENT PROCEDURES AND INTERIM USE OF CASH IN ACCORDANCE WITH PROPOSED CASH BUDGET AND COUNTERMOTION FOR SEQUESTERING OR ALTERNATIVELY FOR RELEASE OF FUNDS AND FOR REVOCATION OF POWER OF ATTORNEY

COMES NOW JASPER BENINCASA, JR. AND FLOCERFIDA BENINCASA (hereafter "BENINCASA") file his Opposition to Debtor's Motion Re Setoff (Wells Fargo) (the "Stipulation") and for Order Under 11 USC §§ 105(a), 345, and 363 Approving Debtors' Proposed Cash Management Procedures and Interim Use of Cash in Accordance with Proposed Cash Budget.

This Opposition and Countermotion for Sequestering or Alternately for Release of Funds and for Revocation of Power of Attorney is based upon the Points and Authorities attached hereto.

Jasper Benincasa, Jr.  
Flocerfida Benincasa

  
/s/ Jasper Benincasa, Jr.

  
/s/ Flocerfida Benincasa

Jasper Benincasa, Jr.  
Flocerfida Benincasa  
9359 Roping Cowboy Ave.  
Las Vegas, NV 89178  
(702) 413-8624

## **POINTS AND AUTHORITIES**

### Facts

The BENINCASA just had a baby born on April 15, 2006. The BENINCASA's intention was to invest their life savings for their child's future by compounding the interest earned pursuant to the Notes Secured by Deeds of Trust on Real Property. The Debtors collectively had fiduciary duties which included obtaining suitable borrowers with real property appraised in excess of the proposed loans and with a reasonable plan to repay the loans. Debtors charged origination fees or "points" to the borrowers and these origination fees or "points" are the primary income of Debtors. At no time were Debtors authorized to co-mingle with or use any funds intended for investment. Debtors were operating under a Power of Attorney which allowed them to collect the payments from the borrowers and to pay said funds to BENINCASA.

Debtors have no legal interest in the funds collected from borrowers. Debtors are not the Payees of the Notes nor are they the beneficiaries of the Deeds of Trust.

Debtors receipted for \$110,000 of BENINCASA money represented by Check #1001 which was deposited into Debtor's account, specifically a Wells Fargo Account with the name of Commercial Mortgage Company Investors Trust Account with an account number 0465657146, on April 11<sup>th</sup>, 2006 and cleared the banking system on April 12<sup>th</sup>, 2006 which is one (1) day before Debtor's Petition. A copy of the final check is attached hereto as Exhibit "A".

### The Law

Debtors and their affiliates are licensed by the State of Nevada Financial Institution Division as mortgage brokers or mortgage agents under NRS 645B. Escrow Accounts are required under NRS 645B.165 through 175 and commingling is prohibited under NRS 645B.180.

### Argument

The BENINCASA is the owner of funds placed into Trust prior to investment. It would appear that under NRS 645B, the Debtor cannot claim that any of "recent checks" represented by Exhibit "A" is a property of the estate. Indeed NRS 645B.165 through 180 make it very clear that the funds are trust funds very similar to those in an attorney's trust account and are given the same protection.

The law at NRS 645B.180 specifically states that "Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage broker or his mortgage agents." To the extent that Debtors have breached their fiduciary duties, they should be disqualified as servicing agents or indeed, as Debtors-in-Possession.

The funds represented by Exhibit "A" do not belong to the Debtor and must be returned or at the very least subjected to sequestration from any assets of the Debtor so that they will not be expended for operations or subjected to claims against the Debtor or its agents.

The BENINCASA does not wish to be an investor with the Debtor and only want funds returned from the Wells Fargo Trust Account.

The transaction between BENINCASA and USA Capital was never completed; USA Capital stated that they were not taking anymore investors; BENINCASA is not an investor and not listed in the Matrix. BENINCASA is a family with their life savings in a Wells Fargo Trust account which is maintained by the Debtor.

Conclusion

Debtors' Motion should be denied, Wells Fargo's Motion should be denied, or limit setoff to accounts which do not hold Investor Trust Funds, and the Trust funds should be returned to BENINCASA since the Notes were never sent to be recorded.

Jasper Benincasa, Jr.  
Floerfida Benincasa  
9359 Roping Cowboy Ave.  
Las Vegas, NV 89178  
(702) 413-8624

## Exhibit "A"

Account: 1818239716  
 Check: 1001  
 Issued: April 11, 2006  
 Cleared: April 12, 2006  
 Amount: \$110,000.00  
 Deposited into: Wells Fargo Account  
 Account Name: Commercial Mortgage Company Investors Trust Account  
 Account Number: 0465657146

**FLOERFIDA BENINCASA**  
**JASPER BENINCASA, JR.**  
 5305 10TH AVE. S. #200  
 LAS VEGAS, NV 89119

00-7182/3222  
 1818239716

1001

5305 10TH AVE. S. #200 12-06 7745 034/11/06

USA Commercial Mortgage Inv. Trust Acct. \$110,000.00

ONE hundred and no/100ths only

Signature: *Jasper Benincasa*

Witness: *Munch / [Signature] / [Signature]*

0322221527 1818239716 1001 0000000000

ENCLOSURE HERE

Order Of  
 Wells Fargo Bank  
 Las Vegas NV 89133  
 122402049

For Deposit Only  
 Commercial Mortgage Company  
 Investors Trust Account  
 DO NOT WRITE ON THIS LINE

INCLEARINES  
 EL SEGUNDO CA  
 5305 10TH AVE. S. #200

122100278  
 0621050243

# Exhibit "A"

Account: 1818239716  
 Check: 1001  
 Issued: April 11, 2006  
 Cleared: April 12, 2006  
 Amount: \$110,000.00  
 Deposited into: Wells Fargo Account  
 Account Name: Commercial Mortgage Company Investors Trust  
 Account  
 Account Number: 0465657146

**FLORENCIA BENINCASA**  
**JASPER BENINCASA, JR.**  
 5305 EL SEGUNDO BLVD. #12-06 7745 034/11/06  
 LAS VEGAS, NV 89178

90-7105/0022  
 1818239716

1001

USA Commercial Mortgage Inv. Trust Acct. \$110,000.00  
 One hundred and thousand and no/100 -

Wells Fargo Bank  
 122193278  
 5305 EL SEGUNDO BLVD. #12-06 7745 034/11/06  
 LAS VEGAS, NV 89178

Munch / Oak / Kilton

Jasper Benincasa

03222746270 1818239716 1001 0010000000

ENCLOSURE - 1st Order Of  
 Wells Fargo Bank  
 LAS VEGAS, NV 89193  
 122193278  
 For Deposit Only

Commercial Mortgage Company  
 Investors Trust Account  
 0465657146

INCLEARINES  
 EL SEGUNDO BLVD  
 5305 40962 04-12-06

LET TO THE  
 INVESTMENT  
 1300000000

122193278  
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